Before the
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

In the Matter of:		
Expedited Consideration for Declaratory Rulings	)	
On the transfer of traffic only under AT&T	)	
Tariff Section 2.1.8., and Related Issues.	)	
	)	
Primary Jurisdiction Referral	)	
from the NJ District Court	)	
.	)	CCB/CPD 96-20
	)	DA – 06-2360
	)	WC Docket No. 06-210
One Stop Financial, Inc	)	
Group Discounts, Inc.	)	
Winback & Conserve Program, Inc.	)	
800 Discounts, Inc.	)	
Petitioners	)	
	)	
and	)	
AT&T Corp.	)	
Respondent	)	

REQUEST FOR COMBINING DECLARATORY RULINGS AND EXTENSION OF TIME TO FILE REPLY COMMENTS

To FCC:
Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary

Ms. Deena Shetler
Via ECFS and email:
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Representing: One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. and
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Jan 3rd 2007

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Dear Ms. Shetler

1) The FCC has been provided with a copy of the email from Florida's Department of Revenue. Florida wants the 4 Inga Telecom companies Declaratory Rulings Requested resolved by the FCC. The IRS also has stated that it wants the same as Florida.

2) However AT&T is stating that the District Court's (Judge Bassler) referral does not encompass issues relating to shortfall and termination infliction. Additionally AT&T gives no weight the FCC general counsel statement that the 4 Inga Telecom companies have the right to request what it wishes even if the District Court didn't refer the Declaratory Rulings. FCC counsel made this written statement well before the District Court referral.

3) Therefore Tips Marketing Services, Corp. filed a separate Declaratory Ruling to further ensure that the issues are addressed. At this point the 4 Inga Telecom Companies gladly invite Tips Marketing Services, Corp. to join in the Declaratory Ruling Requests.

4) Mr. De Laurentis was asked if Declaratory Ruling Requests could be combined and he said yes they could. Mr. De Laurentis also explained that combining the two would have to make sense from the standpoint of judicial economy, in that the same tariff laws were being interpreted in both filings. That would be the case here. Additionally the same undisputed facts are at hand

5) As the FCC is aware there is currently a request for extension from the 4 Inga telecom companies based upon AT&T's attempt to not have all Declaratory Ruling Requests adjudicated. CCI's Mr. Shipp has notified us that he also will be filing comments regarding the extension request.

6) The new set of Declaratory Rulings are extremely brief (6 pages), and address the same exact law and fact but from a different tax angle. An interpretation of tariff law needs to be done in order for the Florida Department of Revenue and the IRS to establish the tax base to then apply their tax rates. Because the **issues overlap,** all declaratory rulings from the 4 Inga telecom companies and Tips should be combined.

7) Additionally, due to the fact that the new Declaratory Rulings are very brief and the same issues the FCC should combine the Public Notices and reply comments periods. Postpone the 4 Inga telecom companies reply comments for just 3 weeks. Give AT&T three weeks to respond to petitioner Tips, Declaratory Rulings. The 4 Inga telecom companies can then reply to AT&T's comments already made and what comments AT&T will make to petitioner Tips' Declaratory Ruling Requests.

8) AT&T and Tips respond to a new FCC Public Notice for the Tips petition by Jan. 24th 2007. The 4 Inga telecom companies and Tips will then respond to both AT&T's Dec 20th 2006 filing and AT&T's Jan. 24th 2007 filing by February, 7th 2007. AT&T of course could also respond on February 7th 2007 to 800 Services, Inc.'s and Combined Companies Inc. (CCI) Dec. 20th 2006 filings. This would effectively combine both petitions, get all issues resolved, and get both petitions on the same schedule.

9) **There would be no need for the 4 Inga telecom companies to go back to the District Court if all these issues are to be decided by the FCC.** The FCC should grant an extension of time to file a reply brief in the Inga Petitioners case anyway—besides the 4 Inga telecom companies initial request, due to what was to be argued.

10) As you are aware the paper volume in this case is many thousands of pages. I am a one man band who works at home. I already lost a week with my 3 children home from school over the holidays and of course preparation for Christmas.

11) AT&T has had since Sept 27th when petitioners filed their initial Declaratory Rulings, to respond; that is almost three months with many AT&T counsel working on the case. I work on the case by myself.

12) I am also rolling out a new division of my business in a couple of weeks, so I will be very busy with this also.

13) Additionally, we are of course the petitioners who are seeking justice and AT&T of course is the defendant. Therefore based upon AT&T's obvious intention to delay, there should be no problem with AT&T with an additional delay.

14) The burden to reply falls on petitioners because AT&T does not have to reply to petitioners due to the fact that petitioners did not file initial public comments by Dec 20th 2006. The comments by 800 Services, Inc and CCI were very minimal in volume.

15) I have already contacted CCI, and 800 Services, Inc., the only other parties that have filed public comments, and both parties are in similar agreement that a postponement to a later date than Jan 17th 2007 is needed.

16) In 2003 the FCC's Judith Nitche also granted a couple of lengthy extensions to both AT&T and petitioners to file the 2003 FCC public notice comments. Thus there is precedent for granting such a request.

17) We ask the FCC to combine the Declaratory Rulings Petitions of both the Inga Companies and Tips and extend the Jan 17th 2007 reply comments (as outlined here in paragraph 8) so as to coordinate with Tips Declaratory Ruling Requests petition and get everything on the same filing schedule.

18) Included to follow as exhibit A is the Table of Contents, Summary, and Brief of Tips, which clearly shows that the same exact facts and tariff law is involved in the Tips petition as the 4 Inga telecom companies petition. In the interests of judicial economy, and the fact that all these issues are inter dependent upon one another, the petitions should be consolidated. decide

19) The 4 Inga telecom companies and Tips, respectfully ask the FCC for this extension and petition consolidation.

Al Inga Pres.

One Stop Financial, Inc
Group Discounts, Inc.
Winback & Conserve Program, Inc.
800 Discounts, Inc.

CC: AT&T
CC: Tips Marketing Services, Corp.
CC: 800 Services, Inc.
CC: Combined Companies, Inc.

Exhibit A

Before the
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In the Matter of:
Expedited Consideration for a Declaratory Ruling)
To determine the Jurisdictional & Revenue Scope)
for Florida Department of Revenues and the IRS tax)
base under AT&T's CSTPII/RVPP Offering to then)
further calculate the Florida & IRS tax rewards for)
Tips Marketing Services, Corp.)

Tips Marketing Services, Corp.	)
Petitioner	)
	)
and	)
AT&T Corp.	)
Respondent	)

REQUEST FOR DECLARATORY RULINGS

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January 3rd, 2007

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Summary

1) Combined Companies Inc. (CCI) was a Florida domiciled corporation that was AT&T's primary customer, which subscribed to AT&T's CSTPII/RVPP under tariff No. 2. Under section 3.3.1.Q bullet 10 of the CSTPII/RVPP discount plans general provisions, CCI was AT&T's customer and was financially responsible for all shortfall and termination charges of CCI's end-user locations, which were located in all 50 States.

2) CCI's CSTPII/RVPP plans utilized AT&T's Enhanced Billing Option (EBO). This option dictated that CCI would inform AT&T how much of CCI's total 28% discount AT&T should provide each end-user location, when that end-user enrolled under CCI's CSTPII/RVPP discount plan. Under EBO the difference between the discount level applied to the end-user and the CSTPII/RVPP's total 28% discount was paid in the form of a monthly check by AT&T to CCI.

3) In June of 1996 AT&T alleged that the CSTPII/RVPP plans were in shortfall. Shortfall is the difference between what the CCI's revenue commitment was and the actual amount of revenue used at the time of shortfall fiscal year true-up calculation. There is currently before the FCC other Declaratory Rulings that are addressing whether these pre June 17th 1994 CSTPII/RVPP plans should have been exposed to shortfall charges in the first place; however for the purposes of this Declaratory Ruling it will go on the assumption that the shortfall charges were valid.

4) In June of 1996 AT&T applied the alleged shortfall charges to CCI's end-user accounts which were located in all 50 States. When AT&T applied the shortfall charges to the end-users bills AT&T did not charge any sales taxes on the shortfall charges. Application for a Tax Reward was made by Tips Marketing Services,

Corp., (Tips) using Form DR-55 with the Florida Department of Revenue due to Florida law which states it is owed its 7% sales tax on shortfall; additionally Florida would receive taxes on possible barter between CCI and AT&T.

Tips also filed for a reward with the Internal Revenue Service (IRS) due to AT&T not applying Federal Excise Taxes (FET) and also the possible barter between CCI and AT&T.

5) What is the proper jurisdiction and revenue scope under the CSTPII/RVPP plans of AT&T's under Tariff No. 2 that is the question that the FCC is to issue a Declaratory Ruling on so the taxing authorities can determine the taxable base to which to apply the applicable tax rates.

6) AT&T in June of 1996 inflicted shortfall and termination charges against CCI's end-users. These charges were removed from CCI's end-users bills in July 1996, obviously one month after the shortfall and termination charges were initially applied. The charges were transferred from all the end-users bills to CCI's sole master account. The charges remained on CCI's master account without the Florida sales taxes/IRS (FET) ever having been applied by AT&T to the charges.

7) AT&T and CCI then enter into a non disclosure settlement agreement in July of 1997 and the shortfall and termination charges were used by AT&T to negotiate a settlement between AT&T and CCI. The sales taxes/FET never were applied or paid by AT&T. AT&T utilized the alleged shortfall charges in return for: A) CCI's cooperation in defending AT&T against 4 companies that were owned by Mr. Inga which were former co-plaintiffs' of CCI, and which continue to have its claims against AT&T. B) Compensation to CCI for damages that were ruled by District

Court (Judge Hayden) as different damages than those suffered by the 4 Inga Companies.

8) The FCC is not being asked to decide whether the taxes should be applied to the shortfall and termination charges; that is a Florida/IRS issue. The amount of the tax reward paid by Florida/IRS to petitioner can be calculated by Florida/IRS after the FCC decides the jurisdictional scope of the revenue for the CSTPII/RVPP plans under AT&T tariff No. 2. The FCC will be asked to declare that the traffic transfer did not transfer away the shortfall and termination obligations away from the Florida based CCI. Additionally that the responsibility for the shortfall and termination obligations is that of the Florida based CCI; not CCI's end-users.

Summary End

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Tips Marketing Services, Corp.)

I Background: The Florida Company CCI Was Responsible for All Shortfall & Termination Charges of Its End-User Locations

1) Despite the fact that Combined Companies, Inc. (CCI) end-users were located in all 50 States,

CCI was AT&T's primary customer of record under AT&T's CSTPII/RVPP tariff No. 2 offering. AT&T tariff section 3.3.1.Q at the 10th bullet states here as Exhibit A:

> Shortfall and/or termination liability are the **responsibility of the Customer**.[1]

2) Therefore CCI remained AT&T's customer even after it transfers to Public Service Enterprises (PSE) some of CCI's end-users. Under the tariff the shortfall and termination (S&T) obligations must stay with CCI since the CSTPII/RVPP AT&T discount plan stays with CCI, which plan ownership defines CCI as AT&T's continued Customer of Record.

3) The FCC's Oct 17th 2003 Declaratory Ruling agreed with AT&T's 1996 brief to the FCC determining that CCI's plans were not being terminated therefore AT&T confirmed CCI's continued responsibilities for shortfall and termination obligations. See FCC Declaratory Ruling Footnote 56 attached here on page 2 of **exhibit C.**

> Although AT&T also argues that the move also avoided the payment of tariffed *termination* charges, *id.*, it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term**) is not at issue here**. Opposition at 3 n.1**. That is consistent with the facts of this matter; petitioners never terminated their plans.** Accordingly, termination charges are not at issue in this matter.

4) Given the fact that AT&T itself agrees that CCI's plan was not being terminated the only possible conclusion as per AT&T's clear tariff language is that shortfall and

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[1] The word "Customer" under AT&T's tariff is the toll free aggregator Combined Companies, Inc. (CCI); NOT the end-users. The end-users are the customers of CCI not AT&T.

termination obligations must stay with, and are the responsibility of the Florida based customer (CCI).

5) Additionally, AT&T tariff section 2.1.8(E)'s provisions regarding remaining jointly and severally liable conclusively confirm that shortfall and termination obligations do not transfer on traffic transfers only on plan transfers. AT&T tariff section 2.1.8(E) addresses the duration that a **transferor** will remain jointly and several liable to AT&T for shortfall and termination obligations, which are transferred away from the **transferor** to the new AT&T **transferee** customer. The obvious reason why section 2.1.8(E) **only** addresses how long the transferor remains jointly and severally liable for the transferred S&T obligations on ---**plan transfers**--- is because: **It is ONLY on a plan transfer that the tariff mandates that shortfall and termination obligations must be transferred.**

6) The very simple reason why 2.1.8(E) does not address how long the transferor (CCI) must remain jointly and severally liable to AT&T for a **traffic only transfer,** is that on a traffic only transfer, the S&T obligations **DO NOT TRANSFER!** On traffic only transfers, the AT&T transferor customer (CCI), will always remain liable to AT&T for its S&T obligations, because the S&T obligations simply do not transfer on traffic only transfers. CCI could utilize other tariff provisions to manage its S&T obligations. Of course 2.1.8 (E) doesn't address joint and several liability on traffic transfers, because there is no joint and several liability, because the actual S&T obligations stay with the transferors plan. The bottom line is that due to the fact that CCI only attempted a traffic only transfer in January 1995, the S&T obligations under the tariff, and thus by law, must stay with the Florida based CCI. (See 2.1.8(E) at **exhibit B)**

II AT&T Used an Illegal Remedy in Applying Charges to CCI's End-Users

7) AT&T used an illegal remedy by initially billing shortfall charges to CCI's end-users, when AT&T's alleged shortfall charges should have been charged to CCI. Typically AT&T would request payment from its customer the aggregator (CCI) and dun that receivable for a period of up to 90 days.

8) After dunning the receivable if CCI still did not pay AT&T's shortfall charges, AT&T's only tariffed remedy was to **reduce the discount amount** of the end-users, because AT&T had no right to charge shortfall charges to end-users which were not AT&T's customers. AT&T's tariff language at section 3.3.1.Q bullet 10 exhibit A is very clear:

> For billing purposes, such penalties **shall reduce any discounts** apportioned to the individual locations under the plan.

Here the tariff language is clear but even if it was not clear, by law, the language must be construed against the carrier (AT&T).

9) In essence because the end-users were not AT&T's customers, what AT&T is limited to, is reducing the discounts of its aggregator Customer CCI; not inflicting shortfall on end-users.

III AT&T Concedes that the Billing Option Used by CCI In Which AT&T Bills the End-users, Does Not Determine that the End-users are AT&T Customers

10) AT&T has already made its position very clear to the FCC in a case involving this same exact transaction, stating that the end-users were not AT&T's.

> AT&T did not have any carrier relationship with Petitioners' customers (the "end-users"). Petitioners do not dispute the accuracy of these statements; just to the contrary, they repeatedly concede that they and not AT&T had the exclusive carrier-customer relationship with the end-users. Similarly the Petitioners acknowledge that **"although AT&T also rendered bills** to Winback & Conserves end-users on the behalf of the latter entity, **the billing arrangement** selected by the reseller **did not create any carrier–customer relationship between AT&T and the end-users.**

11) AT&T's 2003 Further Reply Comments to FCC Page 4:

> Petitioners also concede that the *liability* for all charges incurred by each location was **solely that of the petitioners not the end-users.**

12) AT&T's 2003 Further Reply Comments to FCC page 4:

> As AT&T's customers-of-record, **Petitioners were responsible for the tariffed shortfall and termination charges.** Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 ("AT&T's Further Comments 2003") at 7-8.

13) The FCC must again decide that the Florida based company (CCI) was AT&T's customer of record, not the end-users. AT&T had no right to bill end-users for shortfall charges since these end-users were not AT&T's customers. Also see FCC Oct 17th 2003 Decision fn. 52.

Here as Exhibit: **exhibit C**

> *See generally* AT&T Tariff FCC No. 2; AT&T Contract Tariff FCC No. 516. **As AT&T concedes, the end-users or "locations," were CCI's customers, not AT&T's.** *See* AT&T Further Comments at 6-10 (citing, *inter alia*, *AT&T Corp. v. Winback & Conserve Program, Inc.*, 16 FCC Rcd at 16075, para. 3; *First District Court Opinion* at 3); *see also MCI Telecommunications Corp v. AT&T*, File No. E-90-28, Order, 7 FCC Rcd 5096, 5100, para. 20 (CCB 1992). Because these end-users did not choose AT&T as their primary interexchange carrier, **AT&T had neither proprietary interest in these individual end-user locations nor an expectation of revenue from them.** *See Hi-Rim Communications, Incorporated v. MCI Telecommunications Corporation*, File No. E-96-

> 14, Memorandum Opinion and Order, 13 FCC Rcd 6551, 6559 para. 13 (CCB 1998).

It is thus overwhelming clear that AT&T used an illegally remedy by applying shortfall to end-users, many of which were not located in Florida. These shortfall and termination charges if permissible should have only been applied to the Florida domiciled company CCI.

14) Due to having used an illegal remedy AT&T can not rely upon the shortfall and termination charges. The following is an FCC quote from its 2003 FCC Declaratory Ruling pg 14 para 21.

> We also conclude that AT&T did not avail itself of the remedy specified in its tariff for suspected fraud and thus **can not rely upon** the fraud sections of its tariff to justify its refusal to move the traffic.

15) The FCC also stated to the DC Circuit (FCC brief to DC Circuit pg. 25 para 2) its position on why AT&T could not rely upon the shortfall and termination due to the illegal remedy used by AT&T. [2]

> In essence, the Commission ruled that AT&T had **invoked a remedy other than the ones authorized under its tariff. But the terms of the tariff define and constrain AT&T's conduct and specify the remedies available to the company in connection with its provision of tariffed services.** *See AT&T v. Central Office Telephone Co., 524 U.S. at 222-24.* As this Court (DC Court) recently noted, "filed tariffs are pointless if the carrier can depart from them at will. Orloff, 352 F.3d at 421. Condoning AT&T's departure in this case from the remedial terms of its tariff would "undermine the regulatory scheme" and give AT&T the power to control the economic fates of its customers here, the resellers. The

[2] Although the FCC law mandates that AT&T's shortfall and termination charges can not be relied up by AT&T due to the illegal remedy, Florida would still expect to receive its sales taxes on the shortfall charges if the shortfall charges were permissible. Therefore the shortfall and termination charges must be deemed null and void for telecom purposes but not as to tax ramifications.

> Commission's holding on this issue thus is both consistent with the law and reasonable.

16) AT&T concedes that these end-users are not AT&T's, and the tariff states that shortfall and termination charges are the responsibility of the Florida based company CCI's, for its non-terminated CSTPII/RVPP plan. The FCC needs to interpret the telecom aspects of AT&T tariff No. 2 which will then allow Florida to deal with any tax ramifications and allow Tips Marketing Services, Corp to obtain its tax reward.

IV Relief Sought

17) The FCC must declare that under AT&T tariff No. 2, shortfall and termination obligations must stay with the Florida customer (CCI's) CSTPII/RVPP when only traffic is transferred as opposed to transferring traffic with CCI's, CSTPII/RVPP discount plan.

18) The FCC must declare that AT&T violated its tariff No. 2, by using an illegal remedy in inflicting shortfall and termination charges to non Florida based CCI's end-users, well in excess of the aggregator afforded CSTPII/RVPP discounts.

19) The FCC must declare that AT&T, having used an illegal remedy, can not rely upon shortfall and termination charges due to the illegal remedy.

20) The FCC must declare that the responsibility for all the shortfall and termination obligations in 1996 is not the end-users responsibility but the responsibility of AT&T's primary customer---- the Florida based aggregator CCI.

Respectfully submitted,

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Tips Marketing Services, Corp.

January 3rd, 2007

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